WP(C) 5003/2002
BEFORE
THE HON'BLE MR. JUSTICE RANJAN GOGOI
THE HON'BLE MR JUSTICE AC UPADHYAY

JUDGMENT & ORDER

Upadhyay.J.

These writ petitions having raised a common question of law base d on identical facts are being disposed of by this common judgment and order.

2. The petitioners in all the writ petitions are either serving or retrenched Grade IV employees working as peons attached with the respective Judi cial Officers in various districts of Assam. After having been appointed tempora rily as attached peons to the Judicial Officers, some of the petitioners are wor king and some others have been removed/dismissed from service. Admittedly, all t he petitioners were handpicked by the concerned Judicial Officer without resorti ng to any selection process for the purpose of recruitment and accordingly appoi nted temporarily in regular vacancies. In some of the cases, the appointment let ters were issued to the petitioners, indicating the appointments as co-terminus with the relinquishment of the offices by the Judicial Officers with whom they w ere attached. The writ petitioners worked with the Presiding Officers of the Ju dicial Courts as 'Peons attached with the officers', on regular vacancy on regul ar pay scale and allowances, in terms of the appointment orders.

3. It is contended on behalf of the petitioners that on transfer of the concerned Judicial Officer from one station to another, the usual practice followed is to terminate the services of the Grade IV staff attached with the of ficer to enable the new incumbent in the post, to handpick a Grade IV of his cho ice as 'attached peon'.

4. In order to effectively dispose of their individual grievances o f the petitioners, out of 11(eleven) writ petitions that we are dealing with, we may segregate the cases into two categories; (i) in which the petitioners are s till in service on the strength of stay order issued by this court or otherwise (ii) those others in which the petitioners are no longer in service either due t o termination of their appointments or dismissal from service For the purpose of assessment of present status of the petitioners, only for the sake of effective disposal of the case, we have given herein below brief descriptions of the indi vidual status of petitioners, date of their appointments, and/or termination or continuance in service etc., as the case may be, as follows;.

Serial No.	Case No.	Name of the petitioner	Date of appointment	Department	Present status
Petitioners still in service					
1	WP(C) 5003/02	Fukhan Chandra Kalita	16.3.2K	Foreigners Tribunal, Nag aon	Still in service
2	WP(C) No.349/07	Dipen Kalita	23.3.04	Chief Judicial Magistrate, Tinsu kia	Still in service
3	WP(C) No.214/07	Karna Ram Das	14.5.04	Civil Judge(Sr. Divn.), Tezpur	Still in service
4	WP(C) No.24/05	Jogesh Chandra Nath	1.9.99	Chief Judicial Magistrat e, Bangaigaon	Still in service
5	WP(C) No.2321/05	Tankeswar Das	1.3.04	District & Sessions Judg e, Nalbari	Still in service
6	WP(C) No.720/07	BipuL Ch. Barman	30.6.03	District & Session Judge , Nalbari	Still in service
7	WP(C) No.3779/05	Hitesh Deka	3.3.05	Chief Judicial Magistrat e, Tinsukia	Terminated since 20.4.05
Petitioners, not in service					
8	WP(C) No.5903/01	Surat Jaman	16.3.98	Chief Judicial Magistrat e, Dhemaji	Terminated since August, 2001
9	WP(C) No.6986/02	Thaneswar Boro	30.10.95	Foreigners Tribu nal, Mangaldoi	Pay is not released since 2002

10 WP(C) No.1406/09 Jay Kanta Kalita 17.1.07 Family Court, Kamrup Resigned. Since Feb,09 he is not allowed to perform duties though termination order is not issued.
11 WP(C) No.3041/07 Rajen Neog 4.8.05 District & Sessions Judge, Lakhimpur Service terminated vide order dated 20.3.07

5. It has been contended on behalf of the petitioners that in the appointment orders issued to the petitioners, condition for termination of their services, at any time without notice and without assigning any reasons was incorporated. However, generally all the petitioners served the judicial officers as 'attached peons' without any adverse record or remarks in their character roll.
6. The petitioners sought for legal protection apprehending termination of their services illegally, arbitrarily and without following the procedures as provided under the Assam Services (Discipline & Appeal) Rules, 1964 and in violation of the Constitutional mandate enshrined under Article 311 of the Constitution of India.
7. Learned counsel for the petitioners drawing our attention to the letter No.ABP.274/77/27 dated 13.09.1977, submitted that the State Government also deprecated and disapproved whimsical termination and misuse of Grade IV employees by the officers. The Government in this context by the aforesaid letter directed the officers not to misuse their powers to terminate the service of Gr-IV staff. The letter issued by the Secretary to the Government of Assam, Department of Personnel, A.B. Personnel(B) Branch, Dispur is reproduced hereunder:-

GOVT. OF ASSAM
DEPARTMENT OF PERSONNEL, A.B. PERSONNEL (B) BRANCH

NO.ABP-274/77/27 dated Dispur,
13th September, 1977

From : Shri Bhaskar Baurah, I.A.S.
Secretary to the Govt. of Assam
To,
All Department of the Secretaries
All Heads of Departments
All Deputy Commissioners, Sub Divisional Officers

Sub:- Whimsical termination and misuse of service of Grade_IV Personnel.

Sir,
I am directed to say that it has been brought to the notice of the Government by the Action Committee of The State Government Employee's Association that there are number of cases of whimsical termination of service of Government employees. But according to the Government policy it is clear that there should not be any case of termination of services of a Government employee whimsically. All such cases would be decided after observing all the constitutional procedure as contained in Article 311 of the Constitution of India and the Assam Services (Disciplinary and Appeal) Rules, 1964.

Further, it has been reported by the Action Committee that the services of the attached peons are being misused by some officers. In this connection your attention is drawn to Government Circular letter No.ABP-29/68/4 dated 2-7-68 wherein it has been clearly laid down that all the Class IV staffs are exclusively meant for government work and the Appellation Personnel Orderly has been discontinued.

It is therefore requested that the above instruction should be strictly

adhered to by all concerned.

Yours faithfully

Sd/-
Secretary to the Govt. of Assam
Personnel (B) Department

8. Admittedly, by and large, the practice of appointing attached peons on the personal choice of the concerned officer, on temporary basis, till the continuance of such officers in the respective places of posting, is still being followed.

9. Undeniably service of attached peons to the Judicial Officers is an essential requirement. The attached peons not only meet up the requirements of the individual officer, but also help the Judicial Officers in discharging day to day official work at their residential offices. Under such circumstances, it appears that there has been a general tendency among the officers to fill up the posts of 'attached peons' by appointing persons of their choice in the regular vacancies. Accordingly, instead of holding any selection by adopting lengthy process of interview, etc. the appointing authority concerned selected and appointed the attached peon as per the choice of the individual Judicial Officer with whom the peon concerned is required to be attached. Thus, appointment letters were issued for temporary period until the transfer of the concerned Officer from the particular station. On transfer of the officer, the services of the attached peon was arbitrarily terminated and/or discontinued. In some cases, the peon attached with the officer continued to move along with the officers to different stations. In every new station, a fresh appointment letter was issued to such 'peon attached' with the concerned officer.

10. Though time and again the Government also issued directives to the officers, not to terminate the services of the attached peons without observing all such procedures as contained under Article 311 of the Constitution of India and the Assam Services (Disciplinary & Appeal) Rules, 1964, however, the practice of termination of the services of the attached peons did not stop.

11. Learned counsel for the petitioners pointed out that on more than one occasion, the High Court on the judicial side, on the prayer of 'attached peons', issued directions to the authorities concerned to regularize the services of the Grade-IV 'attached peons' in the Judicial Courts. The High Court in some writ petitions issued directions extending interim protection to the petitioners not to remove/dismiss them from the services of the 'attached peons'. In some of those writ petitions directions to regularize the services of such 'attached peons' were complied with by the respective respondents. The petitioners have also annexed copies of such orders passed by this Court on the judicial side, wherein directions were issued to the respondents concerned to regularize the services of the Grade-IV employees in accordance with the administrative circular/letter and in accordance with law, taking into account the services, which the Grade-IV employee concerned had already rendered. The petitioners in these batch of writ petitions also prayed for similar directions/relief such as reinstatement and/or regularization of their service form this Court by referring to the various directions as aforesaid issued by the Division Bench as well as Single Bench of this Court.

12. The petitioners alleged constant threats of termination of their services by the officers in order to accommodate some other person of their choice in the post of attached peon.

13. As a matter of fact, termination of service of an employee not only takes away the source of his livelihood, but may adversely effect the life and security of the other members of the family dependent on the concerned employee. There cannot be illegal, unfair and unreasonable classification among the similarly situated employees with regard to regularization of their services, how

ever, the respondents did not come forward with any positive response to remove the malady. Neither any Rule nor policy decision of the Government was produced before us to show that the Officers who are utilizing the services of the 'attac hed peons' may appoint or select such Gr-IV employee of their choice. No recruit ment rules made in exercise of the powers conferred by the proviso to Article 30 9 of the Constitution was placed before us under which the 'attached peons' coul d be appointed on temporary basis till the continuance of the particular officer in the station/post.

14. The appointment in question of the petitioners have been made in violation of the recruitment rules, is violative of Articles 14 and 16 of the Constitution of India. Appointing person dehors the rules and to regularize the ir services later on, is not only violative of Article 14 and 16, but it also de nies the legitimate right of eligible candidates to apply and compete for the po sts. Therefore, any order by this Court for regularization of services of the petitioners in their respective posts by the respondent State, would throw awa y the necessary requirement of statutory rules regulating the process of selecti on to a public post and would amount to regularizing the illegal appointments ma de through backdoor. This will be in utter violation of the rule of recruitment to a public posts and therefore not permissible in law.

15. Now the question which arises for consideration is as to whether t he respondents can claim the right of regularization on the basis of the doctrin e of legitimate expectation in view of the fact that the State respondents exten ded such regularization to some other such candidates of the department. In Secy ., State of Karnataka v. Umadevi (3),(2006) 4 SCC 1, Hon'ble Supreme Court, pit hily explained the 'doctrine of legitimate expectation', as follows:

46. The doctrine can be invoked if the decisions of the administrative author ity affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have be en communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an oppo rtunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in Council for Civil Services Union v. Minister of Civil Servic e : 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174(HL), National Building s Construction Corpn. v. S. Raghunathan: (1998) 7 scc 66 : 1998 SCC(L&S) 1770 an d Chanchal Goyal (Dr.) v. State of Rajasthan : (2003) 3 SCC 485 : 2003 SCC(L&S) 322.]. There is no case that any assurance was given by the Government or the de partment concerned while making the appointment on daily wages that the status c onferred on him will not be withdrawn until some rational reason comes into exis tence for withdrawing it. The very engagement was against the constitutional sch eme. Though, the Commissioner of the Commercial Taxes Department sought to get t he appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after Dharwad decision . Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were d one only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation o f the doctrine of legitimate expectation cannot enable the employees to claim th at they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involve d in those cases cannot be made use of to found a claim based on legitimate expe ctation. The argument if accepted would also run counter to the constitutional m andate. The argument in that behalf has therefore to be rejected. (Emphasis supp lied)

16. The purport and meaning of the words anticipation and expectatio

n vis- -vis legitimate expectation, came to be discussed before the Apex Court in Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499. The Apex Court analyzing the difference in the meaning of the words anticipation and expectation to hold that the legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. The doctrine of legitimate expectation expanded by the Apex Court reads as follows::

28. & For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense. (Emphasis supplied)

17. However, keeping in view of the entire gamut of facts discussed above, we are of the considered view that in the absence of recruitment Rules framed under the Constitutional Scheme as provided under Article 309, the irregular practice of picking up attached peons by the Judicial Officer has to come to an end. The practice and the procedure followed in the District judicial establishments mismatch with the constitutional scheme for recruitment and appointment of the Government employees. Irregular appointment and arbitrary termination of service of a Grade-IV staff has been discouraged by the Hon’ble Supreme Court in Umadevi case (supra). However, fact remains that the petitioners in the instant cases were inducted in service by adopting another irregular procedure of selection, which is also not recognized by law. However, in those cases, where the service of the petitioners have been terminated or they have voluntarily resigned from service, no relief whatsoever may be available as the initial appointment did not confer them any right to be retained in service. In such situation, neither this Court can approve such recruitments and appointments made by individual officer, nor can this Court direct the Government to regularise the service of the attached peons, who have been handpicked as stated before. However, keeping in view humanitarian consideration since the petitioners have been working in Grade IV of the service for a long tenure, we propose to dispose of this batch of writ petitions with the following directions, which we consider would be just and proper to redress the grievances of the petitioners within the purview of the constitutional scheme.

(A) That the respondent authorities shall take up immediate necessary steps for recruitment and appointment of the attached peons’ in the District and Sub-Divisional judicial establishments by holding regular process of recruitment.

(B) Until such recruitment process is carried out in accordance with the relevant recruitment rules, the petitioners, who are still in service, shall not be terminated or dismissed from services, arbitrarily without resorting to due process of law.

(C) It is made clear that while undertaking the process of recruitment of attached peons, the petitioners who are still working, and the petitioners who have been terminated from service, shall be given due weight-age for their past service and experience, and their overages shall also be condoned to enable them to participate in the selection process.

18. With the above observations and directions, we dispose of all the writ petitions.